Supreme Court, U.S.
FILED
DEC 15 1994
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No. 94-564

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

UNITED STATES OF AMERICA, Petitioner

v.

JEROME J. RUDDELL

Respondent's Memorandum in Response to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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RESPONDENT JEROME RUDDELL RESPECTFULLY SUBMITS THIS MEMORANDUM IN RESPONSE TO THE PETITION FOR WRIT OF CERTIORARI.[1]

STATEMENT

This respondent was indicted on one count of Receiving Materials Involving Sexual Exploitation of Minors in Violation of 18 United States Code 2252(a)(2) (1988 & Supp. IV 1992). He subsequently entered a conditional plea to the indictment, preserving the right to appeal the lower court's denial of a motion to suppress the videotape that was the subject of the prosecution. Plea memo. 3 The respondent was sentenced to 12 months and one day in prison, and three years supervised release. Gov't C.A. Br. 4.

While the appeal on the suppression issue was pending, and after opening and reply briefs were filed, the Ninth Circuit Court of Appeals decided United States v. X-Citement Video, Inc, 982 F.2d 1285 (9th Cir. 1992). In that opinion, the Ninth Circuit Court of Appeals declared 18 U.S.C. 2252 facially unconstitutional because the statute did not require knowledge of the minority of the performers as an element of the crime. See X-Citement Video Inc. 982 F.2d at 1289-1292. Respondent moved for and was granted leave to file a supplemental opening brief on this issue because of the

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[1] In a letter from the Clerk of the Supreme Court, dated November 21, 1994, Respondent was requested to file a response to the Petition for Writ of Certiorari by December 21, 1994. Subsequent to that letter, on November 29, 1994, the Supreme Court rendered its decision in United States v. X-Citement Video, Inc. 115 St. Ct. 464 (1994). That decision was dispositive of the issue raised in the Petition for Writ of Certiorari in this case. This Memorandum is filed in lieu of a Brief in Opposition to the Petition for Writ of Certiorari at the direction of the Clerk of the Supreme Court.

X-Citement decision.[2] In an unpublished decision, the court reversed the respondents's conviction, relying on their ruling in X-Citement, that the statute was facially unconstitutional.[3] In light of the reversal, the Court of Appeals did not reach or rule on the other issues raised in the appeal.

The United States petitioned for Writ of Certiorari in X-Citement Video, challenging the Court of Appeals determination that the statute was unconstitutional. The Petition in X-Citement Video was granted on February 28, 1994. The United States petitioned for Writ of Certiorari to the Supreme Court in the instant case, on September 27, 1994, after its petition for rehearing was denied by the Court of Appeals. On November 29, 1994, the Supreme Court reversed the decision of the Ninth Circuit Court of Appeals in X-Citement Video. The Court held that the statute was constitutional because knowledge of the minority of the performers is a scienter element included within the statute.

CONCLUSION

The Supreme Court's decision in United States v. X-Citement Video 115 S. Ct. 464 (1994), is dispositive of the question presented in the Petition for Writ of Certiorari in the instant case. Accordingly, the United States' Petition For Writ of Certiorari should be granted and the judgment of the Ninth Circuit Court of Appeals should be vacated. This case should be remanded for further consideration of the appellate issues which were not addressed or decided by the Court of Appeals and which were not the

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[2] This issue was not raised in the district court. The Ninth Circuit granted respondent leave to raise it on appeal, because it was a jurisdictional challenge.

[3] The judgment is noted at 2 F.2d 1159 (table).

subject of the Petition to the Supreme Court in this case.

Respectfully submitted,

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

UNITED STATES OF AMERICA, Petitioner	)	
	)	
	)	NO.
v.	)	
	)	
	)	
JEROME J. RUDDELL	)	

CERTIFICATE OF SERVICE

It is hereby certified that all parties required to be served have been served three copies of the **RESPONDENT'S MEMORANDUM IN RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT** and one copy of **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**, by first-class mail, postage prepaid, this 15th day of December, 1994.

THOMAS C. BRADLEY
ASSISTANT FEDERAL PUBLIC DEFENDER
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ROOM 2151
RENO, NEVADA 89509

Drew S. Days, III
Solicitor General
Department of Justice
Washington, D.C. 20530

Dated this 15 day of December, 1994.

T C Bradley

THOMAS C. BRADLEY